

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

IN RE:

KEVIN McKOOL,

DEBTOR.

§  
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§  
§

CASE NO. 02-81400-HDH-7

**FINDINGS AND CONCLUSIONS  
REGARDING ORDERS OF DISMISSAL AND ORDER OF SANCTIONS**

On the 30<sup>th</sup> day of January, 2003, the Court, heard the matter of the United States Trustee's Motion to Dismiss With Prejudice ("Motion") in the above captioned case. On January 31, 2003 the Court entered the following Orders: a) Order Dismissing Case with Prejudice ("Order of Dismissal"); and b) Reprimand of Debtor's Counsel ("Reprimand"). Subsequently, on February 10, 2003, Debtor's counsel, Joyce W. Lindauer ("Lindauer"), filed a Motion for the Court to Make Additional Findings and Conclusions and to Alter or Amend the Following Orders: a) Order Dismissing Case with Prejudice; and b) Reprimand of Debtor's Attorney ("Motion to Make Additional Findings"); a Memorandum of Points and Authorities in Support of Motions for Relief from Orders of Dismissal and Reprimand ("Supporting Memorandum"); and Motion For Stay Pending Reconsideration and Request for Expedited Consideration ("Motion for Stay"). The Motion for Stay requested an expedited hearing. On February 19, 2003 the Court heard the Motion to Make Additional Findings and the Motion for Stay. On February 20, 2003, the Court entered an Order on Debtor's Motion to Make Additional Findings and Motion to Stay ("Interim Order"). Pursuant to the terms of the Interim Order and Federal Rule of Bankruptcy Procedure 7052, the Court finds and concludes as follows for the purposes of a) amending the Order of Dismissal, b) withdrawing the Reprimand and c) entering an Order of Probation.

### FINDINGS OF FACT CONCLUSION OF LAW

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

2. On December 16, 2002, (the "Petition Date"), The Debtor herein filed a voluntary petition under Chapter 7 of the Bankruptcy Code together with two companion cases, Continental Retail Services, Inc., Case No. 012-81403-BJH-11 and Koolonline.com, Inc., Case No. 02-81406-BJH-7 "(Companion Debtor's").

3. Alan H. Badger ("Badger"), consulted with the attorney for the Debtor herein, Joyce W. Lindauer ("Lindauer") in November, 2002 concerning the Debtor and the Companion Debtors. Lindauer, however was not retained to represent the Debtor until December 16, 2002.

4. On November 15, 2002, Badger in a letter to Celena Adcock, attorney for a judgement creditor of the Debtor ("the Letter") which letter represented that Lindauer had been retained to represent the Debtor.

5. The Letter also discussed seven different judgements held against the Debtor.

6. The Letter showed a carbon copy to Lindauer. Lindauer denied receiving a copy of the Letter and stated that she could not find a copy in her files. *this is not credible. (Hr)* Badger testified that he could not confirm whether the Letter was sent to Lindauer.

7. On the Petition Date, the Debtor was faced with possible contempt in state court for discovery deficiencies. On the Petition Date the Debtor filed incomplete documents and a limited Creditor Mailing Matrix on the Debtor's case, as well the two Companion Cases, *although Ms. Lindauer had a month to accumulate a complete list of creditors.*

8. On December 31, 2002, the Debtor filed a Motion To Extend Time To File Schedules and Statement of Affairs. No additional creditors were listed on this date. This motion was granted by Order entered January 7, 2003.

9. On January 9, 2003, the United States Trustee filed a Motion To Dismiss Case With Prejudice and an Expedited Hearing was requested. The Motion to Dismiss with Prejudice was amended on January 13, 2003.

10. On January 10, 2003, the Debtor filed a Second Motion To Extend Time To File Schedules and Statement of Affairs. No additional creditors were listed at this time.

11. On January 13, 2003, the Debtor filed an Amended Creditor Mailing Matrix, Schedules and Statement of Affairs, Statement of Intent, Disclosure of Compensation and a Certificate of Service of the First Meeting of Creditors, which § 341 meeting was set for February 5, 2003.

12. On January 21, 2003, the Debtor filed a Response in Opposition to the United States Trustee's Amended Motion To Dismiss Case With Prejudice.

13. On January 21, 2003, Creditors Karen Carper and People's Capital and Leasing Corp. each joined in the United States Trustee's Amended Motion To Dismiss Case With Prejudice.

14. On January 30, 2003, just prior to the Court taking the bench, the United States Trustee and Lindauer for the Debtor reached an agreement to dismiss the Debtor's case with prejudice for one year ("Agreed Order to Dismissal").

15. Neither Lindauer nor the Debtor were present when the Court convened. Lindauer and the Debtor having left after executing the Agreed Order to Dismiss and handed same to the

United States Trustee to submit to the Court. The United States Trustee presented the Agreed Order to Dismiss. The Court refused to enter the Agreed Order of Dismissal and summoned Lindauer back to the courtroom.

16. There was no prior notice of any intended disciplinary action given to Lindauer prior to the Court summoning Lindauer to return.

17. When Lindauer and the Debtor returned, the Court resumed the hearing, informing Lindauer that sanctions or a reprimand as to her practice tactics was going to be held at that time, in addition to the hearing on the Motion to Dismiss.

18. The Court heard the argument and evidence submitted by the United States Trustee, and took testimony from the Debtor, Badger and Lindauer as well as argument from Lindauer. Both Badger and the Debtor took responsibility for the lack of information furnished Lindauer as to the creditors of this case and the Companion Cases.

19. Lindauer admitted to the Court that she made mistakes with regard to the mailing matrix filed in the Debtor's Case and the Companion Cases.

20. The Debtor's case was filed with a Creditor Mailing Matrix which was wholly incomplete and wholly inadequate to give proper notice of the filing, as required by 11 U.S.C. §521, F.R.B.P. Rule 1007, and Local Rules of Bankruptcy Procedure 1007.2.

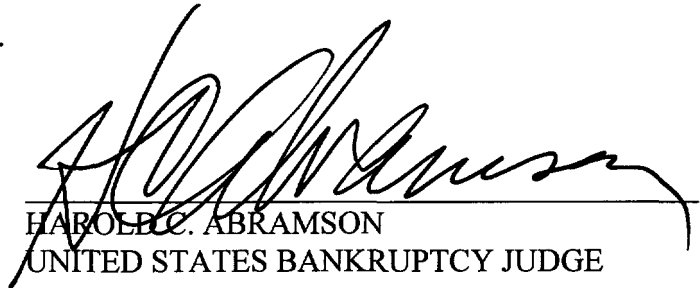
21. Lindauer failed to adequately inquire as to who were the creditors of the Debtor for inclusion in the Creditor Mailing Matrix to be filed at the inception this case.

22. Lindauer's actions were reckless and such recklessness caused damage to the Bankruptcy Process, *and the Debtor.*

23. Because of the circumstances of the case and the experience of Lindauer as a practitioner before this Court, Lindauer's future practice before this Court requires monitoring by the United States Trustee's Office for a period of eighteen months.

Any prior finding of fact or conclusion of law, whether stated separately on in the Order of Dismissal or the Reprimand, are withdrawn and replaced by these findings of fact and conclusion of law.

Dated this 2 day of May, 2003.



HAROLD C. ABRAMSON  
UNITED STATES BANKRUPTCY JUDGE

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